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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, A. D. 1906.

No. 219.

IROQUOIS TRANSPORTATION COMPANY, claimant of the Steamer Winnebago, etc.,
Plaintiff in Error,

vs.

GEORGE W. EDWARDS, etc., copartners as H. D. Edwards & Company,
Defendant in Error.

Error to the Supreme Court of Michigan.

BRIEF FOR PLAINTIFF IN ERROR.

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BRIEF FOR PLAINTIFF IN ERROR.

This is a proceeding by the firm of H. D. Edwards & Co., of Detroit, Michigan, against the Steamer Winnebago, of Michigan City, Indiana, brought under Sec. 10,789, Compiled Laws of Michigan, 1897.

The Winnebago is a steel steamer of 1091 tons burthen and was built by the Columbia Iron Works at St. Clair, Michigan, for the Iroquois Transportation Company, a corporation organized under the laws of the State of Indiana. The contract for the construction of this steamer was made on March 8, 1902, between the Columbia Iron Works and John

J. Boland and Thomas J. Prindiville, and by the latter assigned to the Iroquois Transportation Company April 5, 1902.

The construction of the vessel was begun in 1902, and the cash payments under the contract were as follows:

$7,500 at the date of signing the contract.
$7,500 April 3, 1902.
$4,000 April 15, 1902.
$4,000 June 15, 1902.
$4,000 Aug. 15, 1902.

And in addition to this, changing the terms of the contract, there was an additional $4,000 paid in October, 1902, and two negotiable notes of $4,000 each given, maturing respectively Nov. 1, 1903, and Nov. 1, 1904.

The steamer was launched March 21, 1903, but was not completed for delivery until July 19, 1903, at which time the Iroquois Transportation Company received a bill of sale of the steamer and delivered to the Columbia Iron Works 96 negotiable bonds of $500 each, secured by a mortgage on the steamer, and paid the balance of the cash payment, which was to be made on the completion of the vessel, and which then amounted to between $400 and $500, and in that way paid in full the purchase price of the steamer.

The contract is found on record page 143.

On the 18th of July, 1903, the steamer was inspected, measured and enrolled under the laws of the United States, and also licensed to be employed in domestic and foreign trade for one year from the date of enrollment. (Record, pages 140, 142.)

She left on the 19th of July for Lorain, Ohio,

where she took on board a cargo of railroad iron. At the time of her departure from St. Clair she had not been entirely completed and some of the workmen remained on board of her and returned with her to St. Clair; where she remanied for a day or two and where additional work was done upon her, and after that she was engaged in carrying cargoes between different points on Lake Erie and points on Lake Superior, having brought one cargo from Marquette, Michigan, and another from Lake Linden to ports on Lake Erie.

On the 30th day of July, or within eleven days after the steamer was delivered, the Columbia Iron Works made a common law assignment for the benefit of its creditors.

On the 25th day of August, the firm of H. D. Edwards & Company served a notice on the Iroquois Transportation Company that it made a claim of lien against the steamer for material furnished, and in October following the present complaint was filed as an intervening complaint in the case of De Laney Forge and Iron Company against the Steamer Winnebago then pending in the Circuit Court of Wayne County and process issued, the steamer attached and a bond given for her release by the Iroquois Transportation Company. In both cases the Iroquois Transportation Company appeared, filed a bond for the release of the steamer and subsequently filed its answer in both cases.

A hearing was had before Judge Donovan without a jury, in the Circuit Court of Wayne County in May, 1904, and at this hearing the court found the issues for the plaintiff in both cases, entering judgment in the case of the Delaney Forge & Iron Com-

pany for $1,999.90, with interest from Aug. 1, 1903. In the case of George W. Edwards, *et al.*, for the sum of $1,599.64, with interest from June 30, 1903.

From these judgments the Iroquois Transportation Company took an appeal to the Supreme Court of Michigan and there these decrees were affirmed, whereupon error was assigned and the cases removed to this court.

BRIEF.

I.

That the Steamer Winnebago was, at the time of her seizure, not used or intended to be used in navigating the waters and canals of this state.

Sauter v. *The Sea Witch,* 1st Cal., 162.
Tucker v. *Sacramento,* 1st Cal., 403.
Ray v. *Henry Harbeck,* 1st Cal., 451.
Haytien Republic, 65 Fed. Rep., 120.

II.

A proceeding under the statutes of Michigan against a vessel which has already been enrolled and licensed under the laws of the United States, and at the time of the seizure was actually engaged in interstate commerce, is unconstitutional and void because in conflict with the constitution and laws of the United States.

The Glide, 167 U. S., 606.
Johnson v. *Elevator Company,* 119 U. S., 397.

White's Bank v. *Smith*, 7 Wall., 646.
The Menominee, 36 Fed. Rep., 197.
Perry v. *Haynes*, 191 U. S., 17.
The Edith, Fed. Case 4283, 11 Blatch., 451.
The Edith, 94 U. S., 519.
Moir v. *The Dubuque*, Fed. Case 9696.
The Roanoke, 189 U. S., 185.

III.

The material and supplies were not furnished on the credit of the vessel, but were contracted for, furnished and delivered to and on the credit of the Columbia Iron Works.

The Templar, 59 Fed. Rep., 203.
The Ferry Co. v. *Beers*, 20 How., 393.
The Underwriter, 109 Fed. Rep., 754.
Stephenson v. *Francis*, 31 Fed. Rep., 720.
The Westover, 76 Fed. Rep., 384.
The Abby Whitman, Fed. Case 15.
Drew v. *Hull of a New Ship*, Fed. Case 4078.
Van Pelt v. *Ohio*, Fed. Case 16870.
The Calisto, Fed. Case 2316.
Sewell v. *Hull of a New Ship*, Fed. Case 12682.
Van Cleve Glass Co. v. *Erratt*, 110 Mich., 689.

IV.

The complainants have no lien enforcible under this act for any contracts made or material furnished after the vessel was launched on March 21, 1903.

Globe Iron Wks. v. *Steamer*, 100 Mich., 583.
Lake v. *Manhattan*, 46 Fed. Rep., 797.

Perry v. *Haynes*, 191 U. S., 7.
Tucker v. *Alexandroff*, 183 U. S., 424.

V.

That the steamer Winnebago, engaged in interstate commerce, was not subject to seizure while passing from port to port through the waters within the jurisdiction of the courts of the State of Michigan.

Mich. C. R. Co. v. *Chicago M. L. S. Co.*, 1 Ill. App., 339.
Wall v. *Norfolk W. R. Co.*, 52 W. V., 485; 64 L. R. A., 501.
Connery v. *Quincy O. & K. C. R. Co.*, 99 N. W., 365; 64 L. R. A., 624.

VI.

The contract to build a ship is a maritime contract and therefore there is a lien for material and labor furnished which can be enforced in a court of admiralty, there being a lien under the state law.

People's Ferry Co. v. *Beers*, 20 How., 383.
Roach v. *Chapman*, 22 How., 129.
J. E. Rumbell, 148 U. S., 1.
Davis v. *New Brig*, Fed. Cas., 3643.
Read v. *Hull of a New Brig*, Fed. Cas., 11,609.
The Calisto, Fed. Cas., 2316.
The Hull of a New Ship, Fed. Cas., 6859.
Van Pelt v. *The Ohio*, Fed. Cas., 16,870.
The Abbie Whitman, Fed. Cas., 15.
Sewall v. *The Hull of a New Ship*, Fed. Cas., 12,682.
Purington v. *The Hull of a New Ship*, Fed. Cas., 11,478.

The Richard Busteed, Fed. Cas., 11,764.

Drew v. *The Hull of a New Ship,* Fed. Cas., 4078.

The Chas. Mears, Fed. Cas., 10,766.

N. J. Steam Nav. Co. v. *Merchants' Bank,* 6 How., 378.

Benedict's Admiralty (2 Ed.), Sec. 264.

De Lovio v. *Boit,* 2 Gall., 475.

Insurance Co. v. *Dunham,* 78 U. S. (11 Wall.), 10.

Parsons on Shipping and Admiralty, Vol. 2, p. 327.

Dupont De Nemours v. *Vance,* 19 How., 162.

The Grape Shot, 9 Wall., 129.

The Guy, 9 Wall., 758.

The Lulu, 10 Wall., 192.

The General Custer, 10 Wall., 204.

The Patapsco, 13 Wall., 329.

The Robert Parsons, 191 U. S., 17.

The Blackheath, 195 U. S., 361.

The Magnolia, 20 How., 296-307.

Tucker v. *Alexandroff,* 183 U. S., 424.

Globe Iron Wks. v. *Steamer,* 100 Mich., 583.

The Eliza Ladd, Fed Cas., 4364.

BRIEF AND ARGUMENT.

This is a proceeding instituted in the Circuit Court of Wayne County, Michigan, by an intervening complaint in the case brought by the Delaney Forge and Iron Company against the Steamer Winnebago *in rem*, under the Water Craft Act of Michigan.

The act under which this proceeding is brought is found in 3 Compiled Laws of Michigan, page 3254, and is as follows:

> "(10789) Sec. 2. Every water craft of above five tons burthen, used or intended to be used, in navigating the waters of this state, shall be subject to a lien thereon:
>
> "First, for all debts contracted by the owner or part owner, master, clerk, agent or steward of such craft, on account of supplies and provisions furnished for the use of said water craft, on account of work done or services rendered, on board of such craft, by seamen, or any employe, other than the master thereof; on account of work done or services rendered, by any person, in or about the loading or unloading of said water craft; on account of work done or materials furnished, by mechanics, tradesmen, or others, in or about the building, repairing, fitting, furnishing or equipping such craft: Provided, that when labor shall be performed or materials furnished as aforesaid, by a sub-contractor, or workman, other than an original contractor, and the same is not paid for, said person or persons may give the owner or his agent, or the master or clerk of said craft, timely notice of his or their said claim, and from thenceforth said person or persons, shall have a lien upon said craft, *pro rata,* for his or their said claims, to the amount that may be due by said owner, to said original contractor, for work or labor then done on said water craft."

This case being an intervening petition in the case of Delaney Forge & Iron Co. against the Steamer Winnebago, was tried in the Supreme Court of Michigan with the original case upon one record and one brief. The record in this court is printed with the record in No. 218, October term, 1906, and the errors assigned are identical except Point 2, which does not apply to this case.

The argument upon the errors assigned in this case are identical with the arguments in No. 218 and we, therefore, refer to these in supporting the points made in this case upon the assigned errors.

For the reasons given the decision of the Supreme Court of Michigan should be reversed.

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